

## **PROGRAM AGREEMENT**

The Department of Defense and Compaq Federal, LLC, a Hewlett-Packard Company, agree to the following terms, conditions and obligations for the license and support of Microsoft products as described herein. This Agreement consists of the following:

The Terms and Conditions below  
Products and Pricing, attached  
The Product List, attached  
The License Agreement/Product Use Rights, attached

### **Terms and Conditions**

#### **1. Definitions.**

In this agreement, "you" means the **Department of Defense (DoD)** that has entered into this agreement with Compaq Federal LLC, a Hewlett-Packard Company, and "we" or "us" means Compaq Federal LLC, a Hewlett-Packard Company, who is entering an agreement with Microsoft to provide the products and rights described in this agreement to the Department of Defense:

"additional product" means any product other than an enterprise product for which you choose to order license(s) under an enrollment for an agency affiliate;

"agency affiliate" means (a) the Department of Defense, and (b) with regards to us, any legal entity that we own, that owns us, or that is under common ownership with us, and (c) with regards to Microsoft, any legal entity that it owns, that owns it, or that is under common ownership with it;

"agency" means the Department of Defense;

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Enterprise Agreement program or under the Select License program;

"enrolled affiliate" means an entity, either an agency or an agency affiliate, for which you order licenses under an enrollment under this agreement;

"enrollment" means the document that you submit under this agreement to sign up an enrolled affiliate for the Enterprise Agreement program and make an initial selection of products for an enrolled affiliate;

"enterprise" means the enrolled affiliate and its agency affiliates identified on an enrollment to include in its enterprise;

"enterprise product" means any product that we designate as an enterprise product and that an enrolled affiliate chooses to license under an enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"government contract" means the DOD ENTERPRISE SOFTWARE AGREEMENT (ESA);

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

“License Agreement/Product Use Rights” means the specific rights Microsoft grants enrolled affiliates for each product it licenses and the general license agreement terms that apply to such products;

“L&SA” means a License and Software Assurance for any product ordered;

“order” means a purchase order or contract modification for licenses under this agreement.

“product” means any product available to license as described on the Product List;

“Product List” means, with respect to any licensing program, the statement published by Microsoft from time to time that identifies the products that are or may be made available under each of the volume licensing programs, and identifies which products are available to you and any product-specific conditions or limitations on the acquisition of licenses for the product;

“qualified desktop” means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled affiliate or any agency affiliate included in its enterprise and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a Federal GIA Microsoft Enterprise Agreement v6.0 Terms and Conditions Page 4 of 11 (North America) October 1, 2001 personal computer, (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

“renewal order” means the order that you submit at the beginning of any option term to renew Software Assurance coverage for products previously ordered for an enrolled affiliate under an enrollment;

“run” or “use” means to copy, install, use, access, display, run or otherwise interact with; and

“Software Assurance” means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period.

## **2. How to order product licenses.**

- a. **Placing orders.** You must submit orders for the enterprise products and all other copies of any product you run under this Agreement. Orders must be submitted in the month in which those copies are first run. Unless you are eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. You must make out and submit orders to us identifying which agency affiliate will get the rights to use the software.

When are you eligible to order only Software Assurance? You may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances for Select Orders:

- At the beginning of this agreement, or upon adding a new agency affiliate to the agreement, you may order Software Assurance for copies of products for which the new agency affiliate has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (ii) you place the Software Assurance order for the new agency affiliate at the time you submit order behalf of the new agency affiliate.

- During the term of this agreement (including any renewal term), you may be eligible to order Software Assurance for copies of certain products licensed through retail sources or from an original equipment manufacturer (OEM), provided that you place the order within the required time frame. The Product List identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- You may also order Software Assurance in any other circumstances expressly permitted in the Product List.

**For Enterprise Orders:**

- You may order Software Assurance for the enterprise products you select without the need to simultaneously order a License you or any of the agency affiliates in your enterprise have obtained perpetual licenses for that product on an enterprise-wide basis under a previous "Enterprise Enrollment" (defined below), and the new order becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment".
- The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an order submitted under this agreement, you must order L&SA.
- The term "Enterprise Enrollment," as used in this section 2, means (i) an Enterprise Agreement under Microsoft's Government Integrator Agreement program or third party vendor's GSA Schedule, (ii) another agreement for Microsoft products with a "get current, stay current" component, or (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

**Exceptions to above Enterprise eligibility requirements.**

- Between June 11, 2002 and July 31, 2002 you may order Software Assurance for the Product Configuration you select without the need to simultaneously order a License you or any of the agency affiliates in your enterprise have obtained (i) a perpetual license for that product, and (ii) are current (as identified by the Product Use Rights) as of July 31, 2002 for all components of the applicable Product Configuration being enrolled in.
- After July 31, 2002 you may order Software Assurance for the Product Configurations you select without the need to simultaneously order a License if you or any of the agency affiliates in your enterprise have obtained (i) a perpetual license for that product, and (ii) are currently enrolled in Software Assurance or Upgrade Advantage for all components of the applicable Product Configuration being enrolled in.
- The renewal enrollment becomes effective no later than the day following the date of expiration of that Software Assurance for all components of the applicable Product Configuration being enrolled in.
- For Proof of eligibility you will provide to us on behalf of enrolled affiliate, written notification from the Contracting Officer stating the enrolled affiliate is properly licensed and eligible to enroll under the applicable Product Configuration renewal.

**Adding new enterprise products.**

- You may only add new enterprise products upon mutual agreement.

**Placing annual "true up" orders to account for additional desktops.**

- Each year you must determine the current number of qualified desktops in your enterprise:

(i) at each anniversary of the effective date of this agreement (including anniversaries during any renewal); and, (ii) at the expiration or early termination of this agreement.

- If the number of qualified desktops has increased, you must submit an order for L&SA covering those additional desktops. You must place the order within 15 days following the anniversary of the enrollment effective date, expiration or termination.
- If the desktop count has not increased. If the number has not increased, you must submit an update statement confirming this fact on the form we provide within that 15day period.

- b. **Invoices and payments.** The prices at which we will invoice you will be based upon the applicable price level under this agreement. For any Enterprise product orders for Software Assurance or L&SA, you may elect to spread your payments over the applicable initial enrollment or renewal term rather than paying in a lump sum. In such cases, we will invoice you in three equal annual installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of that that order or renewal term in which the order was placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to you in full upon receipt of the order.
- c. **Reporting country of use.** On all orders, you must report the countries where you will run the products licensed under this agreement and the approximate number of copies run in each of those countries. This information is for our internal use only.
- d. **Privatization.** If you intend to transfer more than ten percent of your computers in connection with a privatization of government operations, and as a result you would like to transfer the copies of the products running on those computers prior to the expiration this agreement, we will work with you and Microsoft in good faith to arrange for acceleration of any remaining payments for the those copies run pursuant to Software Assurance or L&SA and to allow for the transfer of perpetual licenses for such copies as described in the License Agreement/Product Use Rights. Any perpetual licenses obtained as described in this paragraph will be for the latest version of the products available as of the date on which you have completed payment.

**3. How to confirm orders.** We will provide you with license confirmation.

**4. License grant - what you are licensed to run.** At any time after the effective date of this agreement, you may run as many copies as you choose, of any available products you choose, provided that you submit orders to us for all such copies as required in subsection 2(a) (Placing orders). You may run in place of any product version you license from us in accordance with this agreement a prior version or different language version (so long as that different language version is available at the same or a lower price than the price paid for the version ordered) of the same product.

**License only.** Your rights to run copies of any product for which you order only a License is temporary until you have paid for that License in full. Thereafter, you will have a perpetual license to run the number of copies ordered in the version ordered.

**L&SA or Software Assurance.** Your rights under this agreement to run copies of any product for which you order L&SA or Software Assurance is temporary until one of the following occurs: (i) you have paid all installments of the price for such coverage, and the applicable initial or renewal term during which such product licenses were ordered has expired or been renewed; or (ii) you are otherwise entitled to perpetual licenses upon early termination as provided in subsection 8(c) (Effect of termination or expiration). Thereafter, you will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), for the number of

copies ordered during the applicable initial term or renewal term. In the case of early termination as provided in subsection 8(b) (Termination), if you choose only to pay amounts due and payable as of the termination date, then you will instead have perpetual licenses for the number of copies specified in subsection 8(c) (Effect of termination or expiration). Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered. All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable License Agreement/Product Use Rights. This agreement, your order confirmation described in section 3 (How to confirm orders) above, your order to us this agreement, and any documentation evidencing transfers of licenses as described in the applicable License Agreement/Product Use Rights, together with proof of payment, will be your evidence of all licenses obtained.

**5. How to know what product use rights apply.** Except as otherwise described in the License Agreement/Product Use Rights, your use of any product that you license from us is governed by License Agreement/Product Use Rights specific to each product and version. A copy of the applicable License Agreement/Product Use Rights is provided as an attachment to this agreement. Microsoft does not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted.

**6. Software Assurance Membership.** If you commit to obtaining either L&SA or Software Assurance for all copies of all products licensed within a designated product pool throughout the term of enrollment (including any renewal) you are qualified for Software Assurance Membership. Membership may entitle you to special benefits. If you make the commitment for more than one pool you may be entitled to further benefits. If you elect to become a Software Assurance Member you must indicate this selection of the Software Assurance Membership option at the time of signing this Agreement, and the product pool(s) for which you are making the required commitment. A description of Software Assurance Membership benefits and additional details are available from the Microsoft account manager or us.

## **7. Making copies of software**

- a. **Copies necessary for internal deployment.** You may make as many copies of the products licensed as necessary to distribute the products to your users. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source for that product. You may also have a third party make or distribute copies for you, but you are responsible for third-party actions to the same extent it would be if the third party were your employee. You must make reasonable efforts to make your employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement and the License Agreement/Product Use Rights.
- b. **Copies for training, evaluation, research and development (including Research Labs) and back-up.** During the term of the enrollment, each enrolled affiliate and any agency affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60 day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 1% of the enrolled

affiliates qualified desktops for research and development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

- c. **Re-imaging rights.** If you or any agency affiliate to whom you sublicense has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Select License program, it may use copies made from the media provided under this agreement in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions. (i) You must have obtained a separate license from the separate source for each copy being replaced. (ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace. (iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 7(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, you may use copies of an operating system made from the media provided under this agreement in place of copies of the same operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 7(c) is subject to the terms and use rights provided with or otherwise applicable to the copies being replaced, and nothing in this subsection creates or extends any warranty or support obligation.

## **8. Term, termination and renewal**

- a. **Term.** This agreement will remain in effect for 48 full calendar months (36 months for ordering and (12 months to provide SA for products still cover by that services) following the effective date unless it is renewed or terminated earlier as described below.
- b. **Termination.** You may terminate this agreement for convenience. Either party may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such nonpayment is caused by non- appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If an agency affiliate ceases to be a part of your agency, you must promptly notify us of this fact, and we may terminate the applicable portion of the agreement to you.
- c. **Effect of termination or expiration.** Upon expiration or termination of this agreement or any enrollment, you must order licenses for all copies of products you have run under this agreement for which you have not previously submitted an order. Except as provided in the next paragraph, in the event of termination all unpaid installments of the price for any licenses will immediately become due and payable, and you will be entitled to perpetual licenses only after all such payments have been made. If (i) you terminate this agreement as a result of our breach, or (ii) we terminate a portion of this Agreement because an agency affiliate ceased to be an affiliate of your agency, or (iii) we terminate the agreement or a portion of the agreement for nonpayment due to non-appropriation of funds, then you will have the following options. You may immediately pay the total remaining amount due, including all installments, in which case you will have perpetual licenses for all copies of the products you have ordered. As an alternative, you may pay only

amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount you have paid as of the termination date.

## 9. Miscellaneous.

- a. **Notices.** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.
- b. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- c. **Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- d. **Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- e. **Note on Java Support.** The products may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring failsafe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer
- f. **Limitations on actions.** Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date that the cause of action arose.
- g. **Survival.** The License Agreement/Product Use Rights and provisions regarding restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.
- h. **Temporary Use of Software During Times of Conflict.** During Temporary Expeditionary Deployments ("TEDs"), an enrolled affiliate during the term of this agreement may temporarily deploy and install or use on, or access from qualified desktops or servers, the, Standard Desktop Configuration, Enhanced Desktop Configuration, or Enhanced with SQL Desktop Configuration and the additional products, all described in Attachment A (the "Software") on an unlimited number of qualified desktops or servers being used as part of the TEDs ("Temporary Use"). For purposes of this subsection, the term "Temporary Expeditionary Deployments" or "TEDs" shall refer to any number of software licensed products enrolled under this agreement which may be used at no

additional cost by the DoD enrolled affiliate. The coverage will extend to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the terrorist attacks on 9/11/01 where temporary duty stations were needed due to the destruction of government offices. Each enrolled affiliate will make a record of the count of each category of license used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to the contractor for auditing purposes. Such Temporary Use of the software is limited to a period equal to the length of the TED or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by us. At the end of the six month period or as mutually agreed to, the DoD enrolled affiliate will provide a written certification that the licenses have either been destroyed or payment has been made under this agreement. The enrolled affiliate agrees to use the products in accordance with the terms contained in this Agreement and the applicable version of the License Agreement - Product Use Rights. If the DoD enrolled affiliate requires use of the Software beyond the Temporary Use Period and such extended use has not been approved by Microsoft, the enrolled affiliate shall purchase the products in accordance with the pricing terms of this Enterprise Agreement.

- i. **Transfer Rights.** The Microsoft License/Product Use Rights grants the right of license transfer to another agency of the U.S. Government if the enrollee is an agency of the U.S. Government. The Transfer rights of the PUR are clarified to include the right to transfer among DoD Agencies as well as DoD components within Agencies.
- j. **GFE Non-Portable Computer Use Rights.** DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106346 (reference A), which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in teleworking to the maximum extent possible without diminished employee performance. Enrolled affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable License Agreement –Product Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both.

**10. Special reference prices during open enrollment period,** is hereby added to the Enterprise Agreement, as follows:

- a. **Additional definitions.** The following additional definitions shall apply to this Section 10:

"Enhanced Desktop" means the configuration for which the following products have been chosen as enterprise products as of the Offer Deadline: (is) Windows OS Upgrade; (ii) Office Professional; (iii) Core CAL;

"Enhanced with SQL Desktop" means the configuration for which the following products have been chosen as enterprise product as of the Offer Deadline: (is) Windows OS Upgrade; (its) Office Professional; (iii) Core CAL; (iv) SQL CAL;

"Volume Level" means the number of qualified desktops as specified in paragraph b, below;



"Open Enrollment Period" means the period which begins on June 27, 2002, and which ends on June 26, 2003;

"Volume Level" means the number of qualified desktops specified in Attachment 4 from which product pricing levels are determined as set forth in this Section 10;

"Product Configuration" means the Standard Desktop, Enhanced Desktop, or Enhanced with SQL Desktop configuration required by the DOD ESI and listed on the table on Attachment 4 hereto; and

"Standard" Desktop means the configuration for which the following products have been chosen as enterprise products as of the Offer Deadline: (is) Windows OS Upgrade; (its) Office Professional; (iii) Exchange CAL; (iv) Windows CAL; (v) SMS CAL.

**b. Determination of Volume Level**

The Forecasted Volume Level for orders under this agreement is set forth below.

Fiscal Year	DOD ESI Forecast
FY-03	New enrollments = 180,669 desktop
	Renewal enrollments = 348,603 desktop

**c. Determination of prices.**

For enrollments signed during the Open Enrollment Period, the following shall apply:

- The Year 1 per-desktop price for each Product Configuration covered by this agreement, for each qualified desktop irrespective of the number of qualified desktops under this agreement, shall be determined according to the Forecasted Volume Level identified in subsection (b) above. Once established, price levels may be adjusted from time to time based on actual license purchase volume as described in subsection (d).
- The year 1 per-desktop price for each Product Configuration covered by each enrollment, for each desktop irrespective of the number of qualified desktops under such enrollment, shall be re-leveled according to the actual Volume Level of total enrollments that was achieved during the Open Enrollment Period. If the actual Volume Level at the expiration of the Open Enrollment Period is different from your Forecasted Volume Level we will adjust your price level up or down as appropriate, i.e. (i) the difference between the price level in Attachment 4 for the Forecasted Volume Level and the price level for the actual Volume Level will be split between the remaining two years of the affected enrollment, and (ii) the price level for the remaining two years of the enrollment will be adjusted to reflect the actual Volume Level
- The Year 2 and Year 3 per-desktop prices are based on the actual aggregate Volume Level for each product configuration on the date which is 30 days prior to the 2nd or 3rd anniversary date of enrollment, as appropriate. For example:

The year 1 Forecasted Volume for new enrollments is 100,000 to 199,999 qualified desktops, resulting in a Standard Desktop price of \$239.56. The actual number of qualified enrollments

enrolled during the Open Enrollment Period is between 200,000 and 299,999 resulting in a Standard Desktop price of \$237.44. The price for years 2 and 3 is adjusted to reflect the actual Volume Level (\$224), as describe below.

	Quantity	Year 1	Year 2	Year 3
Forecasted volume price for Standard Desktop	199,999 desktops	\$239.56	\$239.56	\$239.56
Actual volume price for Standard Desktop 11 months after enrollment 1 <sup>st</sup> anniversary date	Between 200,000 to 299,999 desktops	\$239.56	\$236.38	\$236.38

**e. For Agreements signed after the Offer Deadline, the following shall apply:**

The Year 1, Year 2, and Year 3 per-desktop prices, respectively, for each Product Configuration on each qualified Desktop shall be determined based upon the the~~re~~current BPA prices for each such Product Configuration, which corresponds to the applicable Volume Level.